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# The California Initiative Process: The Demise of the Single-Subject Rule

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# The California Initiative Process: The Demise of the Single-Subject Rule

In California, the initiative is an electoral process that allows citizens to enact laws by presenting proposed legislation directly to the voters.[1] Since this lawmaking process bypasses the legislature, the initiative is considered a "direct" form of government.[2] California, however, currently limits initiative proposals to one subject.[3] This limitation is commonly referred to as the single-subject rule.[4] In general, the purpose of the rule is to prevent multisubject initiatives that might confuse voters and subvert the actual will of the people.[5]

Unfortunately, the California Supreme Court has applied the rule in a way that frustrates the purpose of the rule. In particular, the court has construed the rule so liberally that a "single subject" now means a "general objective."[6] The danger of this liberal interpretation is that the court allows broad and confusing initiatives to be presented to the voters. Consequently, if a majority of the voters do not understand a complex initiative or do not favor all parts of the initiative, the true intent of the voters may not be effectuated.

To understand why the court has continued to apply a broad interpretation of the single-subject rule to initiative proposals, this comment will examine the purpose and history behind the rule. Specifically, this comment will show that the court developed the liberal interpretation of the rule in earlier cases in which the rule was applied to legislative acts.[7] After initiatives were also subjected to the single-subject rule, the court imposed the same liberal interpretation of the rule on the initiatives. This liberal interpretation of the rule is still applied by the court

1. *See* Note, *The California Initiative Process: A Suggestion for Reform*, 48 S. CAL. L. REV. 922, 922 (1975). *See generally* CAL. CONST. art. II, §8; CAL. ELEC. CODE §§3500-3579.

2. *See* Note, *supra* note 1 at 922.

3. *See* CAL. CONST. art. II, §8(d). The California Constitution, like most state constitutions, includes the limitation that legislative bills contain only one subject. Besides limiting statutes enacted by the Legislature to one subject, the California Constitution also restricts initiatives to a single subject. The rule is equally applied to both processes and is intended to accomplish similar purposes. Ruud, *"No Law Shall Embrace More Than One Subject,"* 42 MINN. L. REV. 389, 389 (1958).

4. *See* Brosnahan v. Brown, 32 Cal. 3d 236, 245, 651 P.2d 274, 279, 186 Cal. Rptr. 30, 35 (1982).

5. *See* Cal. Voter Pamphlet, General Election, Nov. 1948, at 8-9. (Copy on file at the *Pacific Law Journal*).

6. *See* Brosnahan v. Brown, 32 Cal. 3d at 245, 651 P.2d at 279, 186 Cal. Rptr. at 35.

7. *See* Perry v. Jordan, 34 Cal. 2d 87, 92, 207 P.2d 47, 49-50 (1949).

to legislative acts and initiatives. In order for the court to continue to apply the same interpretation of the rule to both the legislative and the initiative process, the two processes should be substantially the same. As this comment will point out, however, the lack of proposal review and the lack of voter understanding in the initiative process clearly distinguishes it from the legislative process. These distinctions, combined with the refusal of the court to review judicial challenges under the rule prior to elections, increase the likelihood that initiatives not favored by the majority of the voters will become law. Because of this possibility, the court should adopt a stricter interpretation of the single-subject rule where initiatives are concerned to prevent those proposals from ever being presented to the electorate.

It is beyond the scope of this comment to solve all of the problems of the initiative process that result in a lack of proposal review and voter misunderstanding. Rather, the specific purpose of this comment is to advocate a change in the standard of review for initiatives challenged under the single-subject rule. To enable a better understanding of why a new standard is necessary, the purposes behind the single-subject rule must first be considered in detail.

## THE PURPOSES AND HISTORY OF THE SINGLE SUBJECT RULE IN CALIFORNIA

### *A. The Purposes of the Single-Subject Rule*

A primary purpose of the single-subject rule as applied to legislative acts is to prevent legislative abuses by "logrolling" and the use of "riders."[8] "Logrolling" is the practice in which several legislators combine their unrelated proposals into one bill.[9] This practice permits the bill to be passed by consolidating the votes of the separate factions.[10] The evil of "logrolling" manifests itself in situations where no single proposal of any minority could have obtained majority approval separately.[11] A "rider" is a variation of logrolling in which a bill that is certain to pass contains a proposal of lesser popularity.[12] Since the bill is certain to pass, the less popular proposal "rides" along on the merits of the more popular proposals in the bill. The same evil perceived to exist in logrolling is present with riders since the rider would not have passed standing alone.[13] Riders also create the additional danger of circum-

8. Ruud, *supra* note 3 at 391; *see also* Note, *Constitutional Law—Appropriation Bills and the Kansas One-Subject Rule—State ex rel. Stephan v. Carlin*, 30 U. KAN. L. REV. 625, 625 (1982).
9. Ruud, *supra* note 3, at 391.
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.* at 413; Note, *supra* note 8 at 625.

venting an important legislative check—the gubernatorial veto.[14] A governor may consider an entire bill to be so important that he will approve the bill even though the rider proposal is abhorrent to him.[15]

Another purpose of the single-subject rule is to provide orderly legislative procedures.[16] By limiting a bill to one subject, the bill may be less complex and, therefore, more easily understood by legislators.[17] Moreover, the limitation to one subject may help prevent the introduction of extraneous matters not germane to the bill.[18] The concerns over the misunderstanding of the proposed law and the inclusion of extraneous material in legislation also exist in initiative proposals.[19] In response to these concerns, the Legislature required the application of the single-subject rule to initiatives in 1948.[20]

Specifically, the Legislature recognized that a multisubject initiative might impede the ability of the electorate to understand the true import of a measure.[21] This lack of understanding would thereby allow the adoption of an initiative by the voters without their realizing the effect of some of the less-publicized sections of the measure. The Legislature further feared that an initiative might pass because minorities advocating some parts of the initiative proposal would pool their votes, giving the proposal a false majority.[22] This fear was aptly expressed in *McFadden v. Jordan*[23] in which the California Supreme Court invalidated an initiative proposal on the ground that the proposal revised the Consti-

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14. Note, *supra* note 8, at 625-26.
15. *Id.*
16. Ruud, *supra* note 3, at 391.
17. *Id.*
18. *Id.*
19. *See* Voter Pamphlet, *supra* note 5, at 8.
20. Voter Pamphlet, *supra* note 5, at 8-9. The 1948 voter pamphlet stated the purpose of the single-subject rule as:

> Today, any proposition may be submitted to the voters by initiative and it may contain any number of subjects. By this device a proposition may contain 20 good features, but have one bad one secreted among the 20 good ones. The busy voter does not have the time to devote to the study of long, wordy, propositions and must rely upon such sketchy information as may be received through the press, radio or picked up in general conversation. If improper emphasis is placed upon one feature and the remaining features ignored, or if there is a failure to study the entire proposed amendment, the voter may be misled as to the over-all effect of the proposed amendment.
>
> Assembly Constitutional Amendment No. 2 entirely eliminates the possibility of such confusion inasmuch as it will limit each proposed amendment to one subject and one subject only.
>
> Protection is also given to those individuals who sign the sponsoring petition. People requested to sign the sponsoring petition will readily understand just what the entire proposition is and not be confused or misled by a maze of unrelated matters some of which are inadequately explained, purposely distorted, or intentionally concealed.

*See generally* Brosnahan v. Brown, 32 Cal. 3d 236, 267, 651 P.2d 274, 293, 186 Cal. Rptr. 30, 49 (1982).
21. *See* Voters Pamphlet, *supra* note 5, at 8-9.
22. *Brosnahan*, 32 Cal. 3d at 268, 651 P.2d at 293, 186 Cal. Rptr. at 49.
23. 32 Cal. 2d 330, 196 P.2d 787 (1948).

tution, rather than amending it.[24] The court stressed that proposals containing "multifarious" provisions prevented voters from expressing separate approval or disapproval of each major part of the proposal.[25]

Thus, the single-subject rule seeks to prevent multisubject proposals that might mislead legislators and voters and prevent them from understanding the true meaning of the proposed legislation.[26] The rule also was instituted to prevent the pooling of minority interests to obtain passage of unfavorable legislation.[27] Specifically, the rule was adopted to prevent these dangers by invalidating an initiative measure or a proposed piece of legislation that contains more than one subject,[28] but throughout the evolution of the rule in the courts, the rule as applied to initiatives has failed to accomplish its intended purposes.

### *B. Evolution of the Single-Subject Rule in California*

Prior to 1948, the single-subject rule was applied only to acts passed in the Legislature.[29] After the Legislature subjected initiative measures to the same single-subject requirement as legislative acts, the California Supreme Court was faced with applying the identical rule to a different law-making process. The court, therefore, drew upon the philosophy and standard it had established in applying the single-subject rule to acts passed in the Legislature.[30]

Specifically, the court prior to 1948 had established the philosophy that the single-subject rule was to be liberally construed.[31] According to the court, a liberal construction was appropriate because the single-subject rule was not intended to destroy legitimate legislation.[32] Based upon this liberal construction of the rule, the court established the "reasonably germane" standard to determine whether or not a statute contained more than one subject.[33] The court held in *Evans v. Superior Court*[34] that all provisions of an act which are "reasonably germane" to

24. *See id.* at 349-50, 196 P.2d at 799.
25. *Id.* at 346, 196 P.2d at 797.
26. *See* Voter's Pamphlet, *supra* note 5, at 8-9.
27. *Brosnahan*, 32 Cal. 3d at 268, 651 P.2d at 293, 186 Cal. Rptr. at 49.
28. *See* CAL. CONST. art. II, §8(d).
29. *Brosnahan*, 32 Cal. 3d at 265, 651 P.2d at 292, 186 Cal. Rptr. at 48.
30. *See* Perry v. Jordan, 34 Cal. 2d 87, 92, 207 P.2d 47, 49-50 (1949).
31. *See* People v. Parks, 58 Cal. 624, 635 (1881). This philosophy has been consistently followed in all later challenges under the rule to legislative acts. *See* Metropolitan Water District v. Marquardt, 59 Cal. 2d 159, 172-73, 379 P.2d 28, 34, 28 Cal. Rptr. 724, 730 (1963) ("Section 24 of article IV must be construed liberally . . ."); Evans v. Superior Court, 215 Cal. 58, 62, 8 P.2d 467, 469 (1932) ("[W]e are of the view that the provision is not to receive a narrow or technical construction in all cases, but is to be construed liberally to uphold proper legislation. . . .") (quoting from Heron v. Riley, 209 Cal. 507, 510, 289 P. 160, 161 (1930) and McClure v. Riley, 198 Cal. 23, 26, 243 P. 429, 430 (1926)).
32. *See* Heron v. Riley, 209 Cal. 507, 510, 289 P. 160, 161 (1930).
33. *See id.*
34. 215 Cal. 58, 8 P.2d 467 (1932).

the purpose of the act, or have one general object, may be united in one bill.[35] When initiatives were subsequently challenged under the single-subject rule, the court continued to use the same "reasonably germane" standard for both initiatives and legislation challenged under the rule.

The first initiative challenged under the single-subject rule sought to repeal an earlier initiative that provided aid to the needy, aged and blind.[36] Although the initiative contained numerous provisions dealing with pension payments, the court, in *Perry v. Jordan*,[37] upheld the initiative using the "reasonably germane" standard.[38] Specifically, the court found that the provisions of the act had one general object and therefore did not violate the single-subject rule.[39]

In the two most recent challenges to initiatives under the rule, the court continued to give a liberal construction to the single-subject rule.[40] For example, in *Fair Political Practices Comm'n v. Superior Court*[41] (hereinafter referred to as *FPPC*) the court upheld the challenged initiative under the "reasonably germane" standard by finding that all of the provisions of the initiative had one general object.[42] The initiative in question was the 1974 Political Reform Act which contained over twenty thousand words that regulated elections to public office, conflicts of interests of public officials and lobbyists in the Legislature.[43] Arguably, the initiative did not deal with just a *single-subject*, but rather with a general policy objective—that of preventing corruption in political campaigns.[44] By upholding this broad statute, the court expanded the single-subject rule to new limits.

The other recent initiative to be challenged under the rule was the Proposition 8 initiative, popularly known as the "Victims Bill of Rights."[45] Proposition 8 dealt with a variety of subjects unrelated to the rights of crime victims. For example, Proposition 8 changed the right to bail and the use of prior convictions for sentence enhance-

35. *See id.* at 62-63, 8 P.2d at 469.

36. *See* Perry v. Jordan, 34 Cal. 2d 87, 89, 207 P.2d 47, 48 (1949). The court faced an unusual problem in this case because the initiative being challenged under the single-subject rule was a repeal initiative. If the court struck down the repeal initiative on the basis of violating the rule, then it impliedly held that the measure sought to be repealed also violated the rule. The court, therefore, had to consider whether the measure sought to be repealed violated the single-subject rule. *Id.* at 92, 207 P.2d at 49.

37. 34 Cal. 2d 87, 207 P.2d 47 (1949).

38. *See id.* at 93, 207 P.2d at 50.

39. *See id.*

40. *See Brosnahan*, 32 Cal. 3d at 236, 651 P.2d 274, 186 Cal. Rptr. 30; Fair Political Practices Comm'n v. Superior Court, 25 Cal. 3d 33, 599 P.2d 46, 157 Cal. Rptr. 855 (1979).

41. 25 Cal. 3d 33, 599 P.2d 46, 157 Cal. Rptr. 855 (1979).

42. *See id.*

43. *See* CAL. GOVT. CODE §§81000-91013.

44. *See Fair Political Practices Comm'n*, 25 Cal. 3d at 54-57, 599 P.2d at 62-64, 157 Cal. Rptr. at 871-73.

45. *See Brosnahan*, 32 Cal. 3d at 236, 651 P.2d 274, 186 Cal. Rptr. 30.

ment.[46] Moreover, Proposition 8 stated that students and staff of public schools have "the inalienable right to attend campuses which are safe, secure and peaceful."[47] The court, in *Brosnahan v. Brown*,[48] held that each of the provisions of the initiative bore a general object or general subject that promoted the rights of actual or potential victims.[49] In accordance with *FPPC*, the court applied the "reasonably germane" standard to find that the rights of crime victims constituted a single subject. Therefore, under the "reasonably germane" standard the court has not clearly defined how broadly an initiative may be drawn.

After *Brosnahan* and *FPPC* the court has established the trend of upholding an initiative whenever possible by giving a liberal construction to the rule.[50] Consistent with this trend is the general refusal of the court to judicially review initiative proposals challenged under the rule until after the election.[51] The court, however, will review the challenge prior to the election if there is a clear showing of invalidity.[52]

The court has given two reasons for this judicial restraint and liberal construction of the rule. One reason is the competing interests between the initiative process and the interests of the rule. On the side of the initiative is the interest of preserving the right of the people to enact legislation through the electoral process.[53] Conversely, the single-subject rule seeks to prevent the dangers of voter misunderstanding and false majorities that may result in subverting the true intent of the electorate.[54] With these competing interests in mind, the court in the past has placed more weight on the interest of the initiative process.[55]

The other reason for the judicial restraint and the broad construction of the rule is the initial interpretation given by the court to the rule. In particular, prior to the application of the single-subject rule to initiatives, the court had determined that the rule was not intended to strike down legitimate legislation and therefore should be liberally construed.[56] This implied that statutes passed in the Legislature were presumed not to have violated the constitutional single subject limitation. Once the single-subject rule became applicable to initiatives, the court also presumed that initiatives were constitutionally valid under the sin-

46. *See* Cal. Voter Pamphlet, June 1982, Primary Election, at 32-35, 54-56.
47. *Id.* at 33.
48. 32 Cal. 3d 236, 651 P.2d 274, 186 Cal. Rptr. 30 (1982).
49. *Id.* at 247, 651 P.2d at 280, 186 Cal. Rptr. at 36.
50. *Id.* at 246, 651 P.2d at 279-80, 186 Cal. Rptr. at 35-36.
51. *See* Brosnahan v. Eu, 31 Cal. 3d 1, 4, 641 P.2d 200, 201, 181 Cal. Rptr. 100, 101 (1982).
52. *See id.*
53. *Id.*
54. *See* Voters' Pamphlet, *supra* note 5, at 8-9.
55. *See Fair Political Practices Comm'n*, 25 Cal. 3d at 42, 599 P.2d at 51, 157 Cal. Rptr. at 860 (1979).
56. *See* Heron v. Riley, 209 Cal. 507, 510, 289 P. 160, 161 (1930).

gle-subject rule unless the initiative clearly conflicted with the rule.[57]

Since the "reasonably germane" standard is the progeny of the liberal interpretation of the rule, which applied to both legislation and initiatives, the "reasonably germane" standard has been applied to both as well. Logically, the same "reasonably germane" standard of review for statutes should be applied to two different law-making processes only if both processes are substantially the same. The two proceses here in question, the initiative and the legislative, are not the same. In fact, the vast differences between the two compel a change in the current application of the single-subject rule to initiatives.

## THE UNSUITABILITY OF THE "REASONABLY GERMANE" STANDARD

The initiative process differs from the legislative process in two ways. Specifically, this section will demonstrate that the initiative process suffers from a lack of proposal review and voter misunderstanding. These two characteristics will be shown to increase the likelihood of multifarious proposals. In addition to the differences between the initiative process and the legislative process, a brief discussion will show how the refusal of the court to review challenges to proposed initiatives under the single-subject rule prior to elections increases the possibility of multifarious legislation. This judicial restraint along with the characteristics of the initiative process will lead to the conclusion that the "reasonably germane" standard of review is inappropriate when applying the single-subject rule to initiatives.

### *A. The legislative v. the initiative process*

A major concern with the passage of legislation in a democratic system is the preservation of the will of the majority.[58] In California both the legislative process and the initiative process contain certain procedures to ensure the enactment of legislation beneficial to the majority of the people.[59] In particular, the statutory procedures required for placing an initiative on the ballot are intended to ensure that the voters only consider beneficial and meritorious initiative proposals. The initiative procedures, however, often fail to meet this goal. This failure results from a lack of proposal review and voter misunderstanding. The combination of these two characteristics increase the opportunity for presentation to the voters of multisubject legislation that may violate

57. *See Fair Political Practices Comm'n*, 25 Cal. 3d at 38, 599 P.2d at 48, 157 Cal. Rptr. at 857; Perry v. Jordan, 34 Cal. 2d 87, 92, 207 P.2d 47, 50 (1949).

58. *See* Ruud, *supra* note 3, at 391.

59. *See* CAL. ELEC. CODE §§3500-3579; J. BEEK, THE CALIFORNIA LEGISLATURE at 36-56 (1974).

the single-subject rule. Before examining the effects of voter misunderstanding on the initiative process, the impact of lack of proposal review on the initiative process must be understood.

*1. Lack of proposal review*

Review of proposed legislation by proponents as well as opponents is essential to the democratic process. The review of proposed legislation encourages debate between supporters and opponents that may inform voters about the proposal and may encourage proponents to amend the proposal to conform with the desires of the voters. An example of this type of proposal review is found in the Legislature.

In the Legislature a bill is subject to multiple review and amendment. Upon the introduction into the Assembly or Senate, a bill must wait thirty days before reaching legislative consideration.[60] This delay allows interested parties time to acquaint themselves with the proposed legislation.[61] Following this waiting period, one of the standing committees hears arguments both opposing and supporting the bill in the presence of the author.[62] In addition to this waiting period, a bill is also subject to amendments by the author or by the entire house, upon the recommendation of the committee, while the bill is before the committee.[63] Moreover, a bill may be amended when it goes to the floor of the house.[64] Finally, after review and passage of the bill in the house of origin, each bill is sent to the other house for a repeat of the same procedure.[65] Once the bill passes in both houses, the governor receives it for his signature.[66] The governor may then sign the bill into law or he may veto the bill.[67]

In contrast with the legislative process the initiative process does not provide for review of initiative proposals. To place an initiative on the ballot, the proponents of the measure must first draft a proposal and submit it to the Attorney General with a written request for a title and summary of the measure.[68] When the Attorney General returns the proposal, the proponents are required to obtain a designated number of signatures in support of the proposal based upon a percentage of quali-

60. *See* CAL. CONST. art. IV, §8(a); BEEK, *supra* note 59, at 37.
61. *See* BEEK, *supra* note 59, at 37.
62. *See id.* at 38.
63. *Id.* at 43.
64. *Id.* at 47-51.
65. *Id.* at 52.
66. *Id.* at 52.
67. *Id.* at 54.
68. *See* CAL. CONST. art. II, §10(d); CAL. ELEC. CODE §3502. At this time, proponents are required to pay a fee of $200 which is later refunded if the proposed initiative qualifies for the ballot. *Id.* §3503. *See generally* CAL. GOVT. CODE §10243.

fied voters.[69] The review by the Attorney General and the requirement of gathering signatures are intended to screen the proposal prior to the election; however, these procedures, when compared with those of the legislative process, inadequately protect the initiative process from multifarious initiatives.

Specifically, the review of a proposed initiative by the Attorney General does not provide for any revision of the measure.[70] Moreover, in contrast to the amending process in the Legislature, an initiative proposal cannot be amended by the Attorney General.[71] In fact, there is no procedure open to opponents to amend the proposal prior to the election.[72] A proposal, therefore, may reach the ballot with no real opportunity for public debate or feedback.[73] This lack of opportunity to amend the initiative places a large burden on anyone who opposes it because their only available remedies are judicial relief or the passage of a subsequent initiative to repeal the disfavored one.[74] Thus, "the only expression left to all other interested parties who are not proponents is the 'yes' or 'no' vote they cast."[75]

The initiative process, therefore, denies voters a fair choice of legislative options. Furthermore, the initiative process discourages proponents from amending proposals in a way that might benefit the voters. The lack of review coupled with this failure to encourage needed amendments has resulted in complex initiatives which may be misunderstood by the voters.

### *2. Poor voter understanding*

The amount of review each bill undergoes in the Legislature serves to inform legislators so that they can vote intelligently on a bill. In addition, legislators readily may seek information from other parties such as the Legislative Counsel or staff members.[76] The initiative pro-

69. *See* CAL. ELEC. CODE §3524. In order to qualify a proposed amendment to the constitution, proponents must obtain signatures totaling at least eight percent of the votes cast in the preceding gubernatorial election. To qualify a proposed statutory change, the signatures of registered voters equalling five percent of the votes cast in the previous election must be gathered. *Id.* Each signer must personally write his or her name as registered and supply his or her address. *Id.* §3516. The persons actually circulating the petitions are required to affirm to that person's qualifications as a solicitor and that all of the signatures were obtained in the solicitor's presence. *Id.* §§44, 3519. After proponents file their petitions with the county clerk or registrar of voters, the clerk or registrar determines the total number of signatures on the petitions submitted in that county and reports the total to the Secretary of State. *Id.* §3520.

70. *See* Note, *supra* note 1, at 930.

71. *See id.*

72. *Id.* at 930-34.

73. *Id.* at 931.

74. *Id.*

75. Brosnahan v. Brown, 32 Cal. 3d at 266, 651 P.2d 292, 186 Cal. Rptr. at 48.

76. *See* BEEK, *supra* note 59, at 32-33.

cess, however, affords voters only a limited opportunity to understand the proposed legislation. Ideally, the signature requirement mentioned above[77] ensures that voters evaluate only meritorious proposals and that voters understand the proposal when they sign the petition.[78] In addition, a summary of the proposal written by the Attorney General along with arguments from the supporters and opponents of the measure must appear in the voters' pamphlet.[79] In theory, these requirements provide adequate information to the voters; however, in practice these requirements impart little understanding.

One reason for poor voter understanding is the seriously flawed signature gathering process that permits easy circumvention of the statutory requirements.[80] Illegal devices that have been used to obtain signatures include the following: forgery of signatures; illegal employment of children as signature gatherers; misleading summaries in campaign literature; and "dodger cards"—cards that cover up the Attorney General's official summary on the petition with one more favorable to the proponents.[81] As a result of these devices, voter misunderstanding of proposals still occurs in spite of the statutory procedures.[82] A voter may be confused over a proposal due to any of the following reasons: (1) the subject matter of the initiative may be so complex that special knowledge is required to understand the proposal; (2) the initiative may be so long that it becomes very difficult for a voter to properly understand the proposal;[83] (3) the subject matter may be obscured by a proponent's simplistic explanation; (4) the voter's education level may prevent him from understanding the initiative; or (5) the voter may be misled by advertising campaigns and slogans.[84] Another reason for

77. To qualify an initiative for the ballot proponents are required to obtain a statutorily required number of signatures. CAL. CONST. art. II, §8(b).

78. *See* Note, *supra* note 1, at 924.

79. *See* CAL. ELEC. CODE §§3559-3567; Note, *supra* note 1, at 924.

80. *See* Note, *supra* note 1, at 928-30. A reason for the circumvention of the statutory requirements is the necessity of proponents to obtain the statutorily designated number of signatures and additional signatures to compensate for those that might be invalidated. Because of the necessity of gathering the large number of signatures, a signature-gathering industry has developed. Since compensation for the signature-gathering industry has now become dependent upon the number of signatures gathered, the motivation to use illegal devices has increased. *Id. See generally* CAL. ELEC. CODE §§41, 42, 44, 53, 3516, 3517, 3519 (examples of some of the statutory procedures mentioned earlier).

81. Note, *supra* note 1, at 928-29.

82. *Id.* at 934-39.

83. E.g., Proposition 8.

84. Note, *supra* note 1, at 935-39. To prevent the influence of large campaign contributions on elections the Political Reform Act of 1974 requires proponents to file campaign statements with the Secretary of State listing committees supporting or opposing the initiative and indicating the amounts spent on the campaign by these committees. CAL. GOVT. CODE §§82013, 84200, 84300. *See generally* Lowenstein, *Campaign Spending and Ballot Propositions: Recent Experience, Public Choice Theory and the First Amendment*, 29 U.C.L.A. L. REV. 505, 513 (1982).

Parts II and III demonstrate that one-sided spending is routinely effective when it is on the negative side and that since decisive one-sided spending characteristically has relied

voter misunderstanding was pointed out by Chief Justice Bird in her dissent in *Brosnahan*:

> . . . the initiative process renders it difficult for the individual voter to become fully informed about any particular proposal. 'Voters have neither the time nor the resources to mount an in depth investigation of a proposed initiative.' 'The majority of qualified electors are so much interested in managing their own affairs that they have no time carefully to consider measures affecting the general public.'[85]

This lack of voter understanding may cause voters to vote contrary to their true intentions regarding the subject of the initiative. Furthermore, voter misunderstanding and the absence of review of initiative measures permits the manipulation of the election and may result in the passage of legislation that benefits only a few.[86] These two characteristics of the initiative process, therefore, distinguish the initiative process from the legislative process. Since the two processes are different, the "reasonably germane" standard should not be applied to both. In addition to these characteristics in the initiative process, the lack of early judicial review provides another reason to change the current application of the single-subject rule.

### *B. Judicial Review of Initiatives*

At present, the California Supreme Court will rarely hear a challenge to an initiative under the rule prior to elections.[87] Only when there is a clear showing of conflict with the rule will the court hear the case before on election.[88] This general refusal of the court to hear pre-election challenges under the rule has resulted in an *ex post facto* use of the rule. This use of the rule causes several problems.

Primarily, the *ex post facto* use of the rule reduces the deterrent effect of the rule. Specifically, when the initiative is approved by the voters, it wears the cloak of validity. Rather than taking a neutral stand in determining whether the legislation violates the single-subject rule, the court takes the position that the voters understood the initiative and that the legislation is valid under the rule.[89] The deterrent effect of the rule, therefore, is decreased because proponents realize that their pro-

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on deceit and distortion, there is reason to believe that such spending often causes results that are contrary to the will of the voters.

*Id.*

85. Brosnahan v. Brown, 32 Cal. 3d at 266, 651 P.2d at 292, 186 Cal. Rptr. at 48.

86. *See* Note, *supra* note 1, at 933-34.

87. *See* Brosnahan v. Eu, 31 Cal. 3d 1, 4, 641 P.2d 200, 201, 181 Cal. Rptr. 100, 101 (1982).

88. *Id.*

89. *See* Brosnahan v. Brown, 32 Cal. 3d at 252, 651 P.2d at 283-84, 186 Cal. Rptr. at 39-40 (quoting from Amador Valley v. State Bd. of Equalization, 22 Cal. 3d 208, 583 P.2d 1281, 149 Cal. Rptr. 239).

posal is not likely to be challenged before the proposal carries the presumption of validity under the rule. As a result, proponents may be encouraged, rather than discouraged, to draft complex legislation in the hope of confusing the voters and gaining voter approval of the proposal.[90]

Therefore, the failure of the court to entertain challenges to initiatives under the rule prior to elections along with the characteristics of the initiative process, increases the likelihood that multisubject initiatives will be enacted into law.[91] A recent example of how the dangers of a multisubject initiative may subvert the will of the people is Proposition 8.

One of the subjects of Proposition 8 was bail reform.[92] On the same ballot as Proposition 8 was Proposition 4 which restated exactly the bail reform provision found in Proposition 8.[93] Proposition 4 passed with 82 percent of the electorate votes while Proposition 8 received only 56 percent of the votes cast.[94] This disparity in votes indicates that over 25 percent of the voters favored bail reform but that they nevertheless voted against Proposition 8 because they opposed other provisions included in the measure.[95] Therefore, since 25 percent of the voters rejected other parts of Proposition 8 but favored the bail reform provision, that 25 percent of the electorate were denied the right to evaluate independently each proposal of an initiative.[96]

Furthermore, Proposition 8 illustrates the danger of voter misunderstanding. The multifarious nature of Proposition 8 prevented voters, as well as the authors of the bill, from understanding the true impact of the proposed legislation. Specifically, the general intent behind Propo-

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90. Moreover, the post election judicial review of challenges to initiatives under the rule is directly contrary to the wording of the single-subject rule in the California Constitution. The California Constitution prohibits an initiative containing more than one subject from being submitted to the voters. *See* CAL. CONST. art. II, §8(d). From the language of the constitution, therefore, it may be inferred that proponents may not submit a draft which contains more than one subject to the Attorney General for an official title and summary. *See* CAL. ELEC. CODE §3502. The court, however, has clearly applied the rule contrary to this constitutional provision.

The court has justified its postelection review of initiatives challenged under the rule based on the principle that unless it is clear that a proposed initiative is unconstitutional, the courts should not interfere with the right of the people to vote on the measure. But this principle applies only if the initiative is unconstitutional because of its substance. If the court determines that the electorate does not possess the power to adopt the proposal in the first instance, then the measure may not be placed on the ballot. *See* Brosnahan v. Eu, 25 Cal. 3d at 6, 641 P.2d at 202, 181 Cal. Rptr. at 102.

91. The danger of multisubject initiatives is the possibility that the voters may misunderstand the proposal or that the proposal may gain passage due to the aggregation of votes by minority interests.

92. *See* Brosnahan v. Brown, 32 Cal. 3d at 278-79, 651 P.2d at 299-300, 186 Cal. Rptr. at 55-56.

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

sition 8 was to deter crime by changing criminal laws and procedures so that there would be more criminal convictions and sentencing to state prisons.[97] The complexity of Proposition 8, however, has frustrated the intent of the measure. For example, attorneys for accused rapists, robbers, and attempted murderers report that their clients have actually benefitted under the new law.[98] Furthermore, judges and prosecutors in several of the largest counties in California report that Proposition 8 has not increased measurably the conviction rate or the average length of sentences.[99] Moreover, it is unlikely that the voters understood that Proposition 8 also would result in granting defendants the right to question alleged rape victims about their sexual activity prior to the alleged rape,[100] authorizing witnesses to testify to matters about which they have no personal knowledge,[101] or authorizing the trial court to exclude certain relevant evidence.[102]

Despite these dangers of the multisubject nature of Proposition 8, the majority of the court upheld the legality of Proposition 8 under a single subject attack. Although Proposition 8 is the only recent example of how multisubject initiatives may result in subverting the will of the voters, the danger still exists that other multifarious initiatives might become law. This danger exists because the court has failed to recognize that the "reasonably germane" standard is not appropriate to determine whether initiatives violate the single-subject rule.[103] Therefore, this comment recommends that the court adopt a standard that will require the court to give closer review to multisubject initiatives.

## RECOMMENDATIONS

The California Supreme Court should replace the "reasonably germane" standard with a stricter standard of review.[104] The standard

97. Wall St. J., Nov. 26, 1982, at 1, col. 1.
98. *Id.*
99. *Id.*
100. *Id.* at 7, col. 2.
101. *See* Brosnahan v. Brown, 32 Cal. 3d at 278, 651 P.2d at 300, 186 Cal. Rptr. at 56.
102. *Id.* at 279, 651 P.2d at 300, 186 Cal. Rptr. at 56.
103. In particular, the standard is inappropriate because the initiative process fails to provide the opportunity for the voters to review initiatives and to understand the true impact of complex proposals. Moreover, the "reasonably germane" standard requires that the court presume that an initiative does not violate the rule.
104. The court in *Brosnahan v. Brown* refused to adopt a more stringent standard of review as suggested by the dissent. Instead, the court continued to follow the earlier cases under the rule that the single-subject rule was not intended to strike down legitimate legislation. Consistent with this view, the court also assumed that voters who approve a constitutional amendment have voted intelligently and have fully considered the entire amendment. Thus, the court ignored the problems of the initiative process discussed by the dissent. *See* Brosnahan v. Brown, 32 Cal. 3d at 245-53, 651 P.2d at 279-84, 186 Cal. Rptr. at 35-40. One reason for a stricter standard of review is to prevent multisubject initiatives containing provisions that are not favored by a majority of the voters. Moreover, the presumption of validity given to initiatives under the "reasonably germane"

that the California Supreme Court should adopt is one that was expressed in *Amador Valley v. State Brd. of Equalization*.[105] The court in *Amador Valley* noted that the provisions of the challenged proposal were not only "reasonably germane," but also were *interrelated* and *interdependent* and necessary to form an *interlocking* package.[106] The essential element of this standard is the interlocking relationship between the provisions of a proposal. This standard will not allow an initiative to stand under the rule unless all of the provisions of the initiative are interdependent, so the court will be required to examine more carefully how the challenged legislation will operate in practice. Specifically, the court will be forced to consider the initiative in hypothetical situations to determine whether each provision depends sufficiently on others to meet the intended objectives of the proposal.

In addition to a stricter standard, the court should entertain pre-election challenges to initiatives under the rule. This does not mean, however, that the court must give full consideration to every pre-election challenge. In fact, the court should use its discretion to avoid lengthy trials that could prevent challenged initiatives from ever being presented to the voters.

This early judicial review, along with the proposed stricter standard, will require the court to invalidate multifarious initiatives. The court will no longer be able to presume that the challenged initiative conforms with the single-subject rule and the initiative will not be shielded from the rule by voter sanction. This early judicial review coupled with the stricter standard will further prevent the enactment of multifarious initiatives by increasing the deterrent effect of the rule.

In response, initiative proponents will be forced to draft proposals that are narrower in scope. For example, had Proposition 8 been reviewed under the proposed stricter standard, its proponents would have had to modify the initiative significantly. Specifically, the stated purpose of Proposition 8 was to promote the rights of actual or potential

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standard may encourage proponents to draft complex and confusing measures that may not be favored by a majority of the voters. Therefore, the court should give a closer review to initiatives challenged under the rule.

105. 22 Cal. 3d 208, 231, 583 P.2d 1281, 1290-91, 149 Cal. Rptr. 239, 248-49 (1978).

106. *See id.* at 231, 583 P.2d at 1290, 149 Cal. Rptr. 248. The initiative challenged in *Amador* was the Proposition 13 property tax initiative. Proposition 13 consisted of four major elements designed to effect a real property tax rate decrease. The elements were: (1) a real property tax rate limitation; (2) a real property assessment limitation; (3) a restriction on state taxes; and (4) a restriction on local taxes. Since real property tax is a function of both rate and assessment, sections one and two are necessary to assure that both variables in the property tax formula are subject to control. Also, since any tax savings resulting from sections one and two could be withdrawn or depleted by additional state or local property taxes, sections three and four are necessary to restrict the imposition of additional taxes. Thus, each section is dependent upon the other to effect the goal of property tax relief. *Id.*

crime victims.[107] This purpose was to be accomplished by providing restitution to crime victims, providing citizens with the right to safe schools, changing the right to bail, changing the use of prior convictions for impeachment or sentence enhancement, and changing court procedures in criminal cases.[108] Applying the proposed standard to the various sections, however, reveals that the sections do not depend on one another. In particular, only two aspects of the initiative relate directly to crime victims—those provisions dealing with restitution and victims' statements at sentencing and parole hearings.[109] The numerous other provisions of the initiative revising criminal procedures have only an incidental effect on the victims of crime.[110] Similarly, providing restitution to crime victims is not dependent upon having safe schools in order to promote the rights of crime victims. In fact, Proposition 8 grants to students and staff the right to protection from not only criminal violence but also from every danger that might threaten their safety.[111] Furthermore, even if the right to safe schools was limited to protection from criminal violence, the right to restitution would not prevent criminal violence in schools.

This lack of interdependency among the provisions in Proposition 8 illustrates the inadequacy of the "reasonably germane" standard. For example, in order for the court to find that all of the provisions of Proposition 8 encompassed one subject, the court expanded the subject of Proposition 8 to include "potential crime victims."[112] "Potential crime victims" could include virtually every aspect of our lives. Therefore, "the single-subject rule would be rendered meaningless if it could be complied with simply by devising some general concept expansive enough to encompass all of an initiative's provisions."[113] By applying the proposed standard, however, multisubject initiatives similar to Proposition 8 would not become law.

In addition to the foregoing, early judicial review also will deter multifarious initiatives from becoming law. By allowing an initiative to be challenged under the rule prior to elections, the initiative may be found to violate the rule, thus eliminating the presumption of validity given to an initiative by the court after the initiative has been approved by the

107. *See* Cal. Voter Pamphlet, *supra* note 48, at 32.
108. *Id.*
109. Brosnahan v. Brown, 32 Cal. 3d at 271, 651 P.2d at 295, 186 Cal. Rptr. at 51 (Bird, C.J., dissenting).
110. *Id.*
111. *Id.* at 272, 651 P.2d at 296, 186 Cal. Rptr. at 52 (Bird, C.J., dissenting).
112. *Id.* at 273, 651 P.2d at 296, 186 Cal. Rptr. at 52 (Bird, C.J., dissenting).
113. *Id.*

voters. Without the presumption of validity, proponents will be deterred from presenting to the voters initiative proposals that contain multiple and unrelated provisions each favored by only a few voters but when combined could carry a majority. Another benefit of early judicial review is that proponents may be able to amend the proposal in conformance with the rule in time to present the proposal to the voters.

This early judicial review and stricter standard is superior to the current application of the rule used by the court because the former will protect more effectively the will of the people without impairing their right to enact legislation by initiative. The proposed standard will invalidate initiatives with multiple provisions that barely relate to the purpose of the initiative. Moreover, since the rule is limited to those initiatives with multiple provisions, people are still free to present to the voters an unlimited number of initiatives that contain *single* provisions.

## CONCLUSION

The current application of the single-subject rule to initiatives by the California Supreme Court frustrates the purpose of the rule. Moreover, the court does not clearly define the meaning of a single-subject. In order, therefore, to ensure that the purposes of the rule are followed, the court should adopt a new application of the rule.

Originally, the single-subject rule was enacted to curb the abuses of "logrolling" and "riders" in the legislature. Subsequently, the rule was extended to prevent multisubject initiatives that might mislead voters or that might rely upon the aggregation of minority interest to obtain passage. Once initiatives were subject to challenges under the rule, the California Supreme Court was faced with the task of choosing a standard to determine what constituted a single subject. The court chose the established "reasonably germane" standard that had been applied to statutes passed in the Legislature. If the initiative and the legislative process, however, are not substantially the same then logically the court should not apply the same "reasonably germane" standard to both processes. The lack of proposal review and the possibility of voter misunderstanding of initiatives, in fact, clearly distinguish the legislative and initiative processes. These characteristics of the initiative process and the lack of early judicial review of initiatives challenged under the rule prior to elections increase the likelihood that multifarious initiatives will become law. Using the "reasonably germane" standard of review for initiatives, the court has upheld initiatives encompassing very broad subjects. By upholding initiatives with broad subjects, the potential exists that "initiatives could embrace hundreds of uncon-

nected statutes, countless rules of court and volumes of judicial decisions, as well as completely alter the complex interrelationships of our society."[114] The "reasonably germane" standard, therefore, is not the appropriate standard to determine whether initiatives violate the single-subject rule.

Consequently, the court should adopt a new standard to protect the will of the people. The standard proposed by this comment would require that multiple provisions within an initiative be interdependent and accomplish the purpose of the initiative. In addition, the proposed standard would require the court to hear challenges to initiatives prior to elections. This stricter standard and early judicial review would increase the deterrent effect of the rule without impeding the ability of the voters to enact legislation by initiative. Specifically, the standard would deter multifarious legislation because the standard would force the court to strike down legislation with broad purposes and containing provisions that are only remotely related to the purpose of the initiative. In turn, proponents would be discouraged from drafting multifarious legislation containing provisions that are unfavorable to the majority of voters. Thus, rather than stifle the voice of the people, the proposed standard will make that voice more clearly heard.

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114. *Id.*